

By: Villarreal

H.B. No. 133

A BILL TO BE ENTITLED

AN ACT

relating to mandatory sales price disclosure in real property sales; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Property Code, is amended by adding Chapter 12A to read as follows:

CHAPTER 12A. MANDATORY SALES PRICE DISCLOSURE

Sec. 12A.001. MANDATORY SALES PRICE DISCLOSURE. (a)

Except as provided by this section, a person may not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument is attached to a sales price disclosure form as described by this chapter.

(b) If a sale of real property involves property other than real property, the purchaser shall file a sales price disclosure form not later than the 30th day after the date on which the purchaser records or has recorded the instrument conveying the property.

(c) This chapter does not apply to an instrument conveying only a timeshare interest in real property.

Sec. 12A.002. SALES PRICE DISCLOSURE FORM. (a) A sales price disclosure form filed under this chapter must state:

(1) the sales price of the property that is the subject of the attached instrument conveying real property under a contract

1 for sale or the exemption under Section 12A.005 that qualifies the
2 purchaser for nondisclosure of sales information; and

3 (2) the date of the sale.

4 (b) A purchaser may also disclose in a sales price
5 disclosure form any information the purchaser considers relevant to
6 explain the sales price, including:

7 (1) the method used to finance the sale, including
8 cash, seller financing, and third-party financing;

9 (2) whether the sale involved property other than real
10 property and the type of property involved in the sale, whether
11 tangible or intangible, and if so, the portion of the sales price
12 allocated between real property and other property;

13 (3) whether the sale involved property located in more
14 than one county and if so, the portion of the sales price or other
15 consideration allocated to the portion of the property located in
16 each county;

17 (4) whether the sale was part of a combined sale of
18 real property investments and, if so, the portion of the combined
19 sales price allocated to the property subject to Section 12A.001;

20 (5) whether the sale involved a tax deferred exchange
21 under Section 1031, Internal Revenue Code of 1986 (26 U.S.C. Sec.
22 1031), and applicable regulations;

23 (6) whether the sale was a sale of an entire business
24 or business unit;

25 (7) a statement that the sales price is provisional
26 and a correct sales price will be submitted in an amended sales
27 price disclosure form on or before the first anniversary of the date

1 the initial sales price disclosure form is filed; and

2 (8) a description of any unusual or extraordinary
3 terms of the sale or transfer that affected the amount of the sales
4 price.

5 (c) A sales price disclosure form must be signed by the
6 purchaser of the real property described in the form.

7 (d) The comptroller shall adopt and make available
8 electronically a sales price disclosure form for filing the
9 information required by this chapter.

10 (e) A sales price disclosure form shall be prepared by the
11 purchaser of the property described in the form or by another person
12 on behalf of the purchaser.

13 (f) A person who prepares a sales price disclosure form on
14 behalf of a purchaser of the property described in the form is not
15 liable to any person for preparing the form or for any unintentional
16 error or omission in the form.

17 (g) A person may amend a sales price disclosure form at any
18 time during the period the person owns the property that is the
19 subject of the form.

20 Sec. 12A.003. COUNTY CLERK RESPONSIBILITY. (a) The county
21 clerk shall mark the date a sales price disclosure form is filed on
22 the face of the document when the document is presented for filing.

23 (b) The county clerk may not refuse to record an instrument
24 solely because the instrument fails to comply with this chapter.

25 (c) The county clerk may not be held criminally or civilly
26 liable for recording a sales price disclosure form or disclosing
27 information in a sales price disclosure form.

1 Sec. 12A.004. ACTION TO COMPEL COMPLIANCE. (a) If a chief
2 appraiser discovers an instrument recording a conveyance of real
3 property under a contract for sale that lacks an attached sales
4 price disclosure form or that has an attached sales price
5 disclosure form that contains an error or omission, the chief
6 appraiser shall provide written notice to the purchaser:

7 (1) identifying the error or omission;

8 (2) providing instructions for filing a sales price
9 disclosure form;

10 (3) informing the purchaser of the penalties for
11 failure to properly file a sales price disclosure form on or before
12 the 30th day after the date the notice is received by the purchaser;
13 and

14 (4) including a copy of a sales price disclosure form.

15 (b) If a purchaser fails to comply with this chapter on or
16 before the 30th day after the date the purchaser receives the
17 written notice under Subsection (a), the purchaser is liable to the
18 state for a civil penalty for each violation in an amount equal to:

19 (1) five percent of the sales price of the property, if
20 the purchaser has failed to file a sales price disclosure form; or

21 (2) five percent of the difference between the sales
22 price amount reported in the sales price disclosure form and the
23 actual sales price, if a sales price disclosure form was filed
24 stating an erroneous sales price amount.

25 (c) The attorney general or the county or district attorney
26 for the county or district in which the property is located may
27 bring suit to recover a penalty under this chapter.

1 Sec. 12A.005. EXEMPTIONS. A person may use the sales price
2 disclosure form to claim an exemption from disclosing the sales
3 price of real property, and omit the sales price from the sales
4 price disclosure form, if:

5 (1) the sale is made under a court order;

6 (2) the sale is made to or from a trustee in
7 bankruptcy;

8 (3) the sale is made under a power of sale under a deed
9 of trust or other encumbrance secured by the property;

10 (4) the sale is made by a deed in lieu of foreclosure;

11 (5) the sale is made by one co-owner to one or more
12 other co-owners;

13 (6) the sale is made to a spouse or to a person or
14 persons in the first degree of lineal consanguinity of one or more
15 of the sellers or grantors;

16 (7) the sale is made to or from a governmental entity;

17 (8) the sale is made under the power of eminent domain;

18 (9) the sale is made to a utility company and the real
19 property is an easement, license, or right-of-way;

20 (10) the sale represents a transfer of title resulting
21 from a merger or combination of corporations, partnerships, limited
22 liability companies, or other entities under common control;

23 (11) the sale represents a transfer among entities
24 under common control:

25 (A) as a contribution to, or a dividend or
26 distribution of, capital for no consideration or nominal
27 consideration; or

1 (B) in sole consideration for canceling or
2 surrendering an interest in a corporation, partnership, limited
3 liability company, or other entity;

4 (12) the real property is a severed mineral interest;

5 (13) the property is regulated by the Public Utility
6 Commission of Texas, the Railroad Commission of Texas, the federal
7 Surface Transportation Board, or the Federal Energy Regulatory
8 Commission and the purchaser provides to the chief appraiser, on
9 written request of the chief appraiser:

10 (A) a copy of the annual regulatory report
11 covering the property; and

12 (B) sufficient information to enable the chief
13 appraiser to allocate the value of the property among the
14 appropriate taxing units for which the appraisal district appraises
15 property;

16 (14) the property is subject to appraisal by a third
17 party retained by the appraisal district and the purchaser
18 qualifies for an exemption under any of Subdivisions (1)-(13) or
19 (15) and provides information substantially equivalent to that
20 required to demonstrate an exemption under the applicable
21 subdivision directly to the third party appraiser; or

22 (15) the property is exempt from taxation.

23 Sec. 12A.006. USE OF SALES DATA. The sales data disclosed
24 under this chapter may not be used as the sole basis by the chief
25 appraiser for increasing the appraised value of real property
26 described in a sales price disclosure form.

27 Sec. 12A.007. AUTHORITY TO BRING SUIT. (a) A person may

1 file a suit in district court to compel an appraisal district to
2 comply with Section 12A.006. A person bringing an action under this
3 subsection must pay a \$500 deposit into the registry of the court.
4 The court shall distribute the deposit to the prevailing party on
5 entry of final judgment in the action.

6 (b) If the party bringing an action under this section
7 prevails on the merits, the court shall order the appraisal
8 district to comply with the applicable law and pay the prevailing
9 party's costs.

10 (c) As a prerequisite to filing a suit under this section, a
11 person shall give certified written notice to the defendant at
12 least 60 days before the date the person files the suit advising the
13 defendant in reasonable detail of the person's specific complaint.

14 SECTION 2. Section 25.19(b), Tax Code, is amended to read as
15 follows:

16 (b) The chief appraiser shall separate real from personal
17 property and include in the notice for each:

18 (1) a list of the taxing units in which the property is
19 taxable;

20 (2) the appraised value of the property in the
21 preceding year;

22 (3) the taxable value of the property in the preceding
23 year for each taxing unit taxing the property;

24 (4) the appraised value of the property for the
25 current year and the kind and amount of each partial exemption, if
26 any, approved for the current year;

27 (5) if the appraised value is greater than it was in

1 the preceding year, the amount of tax that would be imposed on the
2 property on the basis of the tax rate for the preceding year;

3 (6) in italic typeface, the following statement: "The
4 Texas Legislature does not set the amount of your local taxes. Your
5 property tax burden is decided by your locally elected officials,
6 and all inquiries concerning your taxes should be directed to those
7 officials";

8 (7) a detailed explanation of the time and procedure
9 for protesting the value;

10 (8) the date and place the appraisal review board will
11 begin hearing protests; ~~and~~

12 (9) a brief explanation that the governing body of
13 each taxing unit decides whether or not taxes on the property will
14 increase and the appraisal district only determines the value of
15 the property;

16 (10) in italic typeface, the following statement: "A
17 sales price disclosure form may not be used as the sole basis for
18 determining appraised value"; and

19 (11) a detailed explanation of the taxpayer's right to
20 file suit against an appraisal district under Section 12A.007,
21 Property Code.

22 SECTION 3. This Act takes effect January 1, 2010.